

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AT&T CORP. and ALASCOM, INC. d/b/a  
AT&T Alascom, Inc.,

Plaintiffs,

v.

DAVID W. WALKER, DONALD J.  
SCHROEDER, and TERRY A. GUNSEL,

Defendants.

Case No. C04-5709FDB

ORDER GRANTING TRUSTEE'S  
MOTION TO INTERVENE AND BE  
SUBSTITUTED AS REAL PARTY IN  
INTEREST FOR CERTAIN CAUSES  
OF ACTION

Terrence J. Donahue, Acting Trustee for the Chapter 7 bankruptcy estate of PT Cable, Inc., moves for an order (1) granting the Trustee leave to intervene in this action and substitute in as the real party in interest to prosecute four causes of action asserted herein by the Plaintiff, and (2) granting the Trustee leave to amend the causes of action for which the Trustee is substituted as the real party in interest and to assert new claims against both existing and new defendants. This cause of action has been stayed pending this motion and the Court's action thereon.

The Trustee of the PT Cable Chapter 7 estate has made a sufficient showing that he, as administrator of the bankruptcy estate, is the real party in interest to prosecute the following claims for relief asserted by Plaintiffs AT&T and Alascom: Third, Breach of Fiduciary Duty; Fifth and

1 Sixth, constructive and actual fraudulent conveyances; and Eighth, illegal dividends. The Trustee has  
2 also made a sufficient showing that his intervention is appropriate pursuant to Fed. R. Civ. P. 24(a)  
3 as he has a direct interest in transaction that are the subject of this case, and that as to the property  
4 involved, that the Trustee has a right o avoid the fraudulent transfers of PT Cable's property, which  
5 interest cannot be adequately protected unless the Trustee is allowed to pursue the claims for the  
6 benefit of all creditors, not merely for the original plaintiffs herein.

7 The Trustee also demonstrates that it is appropriate to allow him to make minor amendments  
8 by making additional factual averments and adding additional parties, as more fully elaborated in his  
9 motion.

10 Neither AT&T, the original plaintiffs, nor the Defendants herein oppose the Trustee's  
11 motion. Defendants, however, requests that the Court enter an order that AT&T lacks standing to  
12 assert the Third, Fifth, Sixth, and Eighth claims and that the claims be dismissed as the relief  
13 requested in the Defendants March 14, 2005 Motion To Dismiss (Dkt. # 14), which was stayed  
14 pending the Trustee's motion to intervene. Defendants also suggest that the stay continue until the  
15 Trustee has formally intervened, any additional parties have been joined and any motions to dismiss  
16 have been resolved.


17 The Court agrees with the Trustee that dismissal is unnecessary and inappropriate, as the  
18 Trustee has sought to intervene and be substituted as real party in interest (as opposed to filing a  
19 separate action) in part, to preserve the ability to have an amended pleading relate back to the date of  
20 filing of the original pleading. Upon intervention, the Trustee will be the only party plaintiff entitled  
21 to prosecute the Claims in which the Trustee has been substituted.

22 The Court also agrees that discovery should not be delayed pending the joinder of additional  
23 parties and decisions on pending motions to dismiss because discovery may be necessary to identify  
24 additional parties and may be appropriate in order to respond to motions to dismiss. The Court,  
25 therefore, will request a Joint Status Report of the parties and reschedule matters accordingly.

1 NOW, THEREFORE, IT IS ORDERED:

- 2 1. The Motion of Terrence J. Donahue, Trustee for the Chapter 7 bankruptcy estate of  
3 PT Cable, Inc., (1) To Intervene And Be Substituted As Real Party In Interest For  
4 Certain Causes of Action, and (2) To File A Complaint In Intervention, Amending  
5 Certain Causes of Action, Adding Claims and Defendants is GRANTED.
- 6 2. Terrence J. Donahue, is granted leave to intervene in this action and is substituted as  
7 the real party in interest herein to prosecute the following causes of action asserted by  
8 the original plaintiff herein (as the same may be amended by the Trustee's Complaint  
9 in Intervention): the Third Claim for Relief (Breach of Fiduciary Duty), the Fifth  
10 Claim for Relief (Constructive Fraudulent Conveyances), the Sixth Claim for Relief  
11 (Actual Fraudulent Conveyances), and the Eighth Claim for Relief (Illegal Dividends).  
12 The Trustee alone has standing to further prosecute the foregoing claims as they may  
13 be amended; and
- 14 3. The Trustee is granted leave to file a Complaint in Intervention substantially in the  
15 form attached as *Exhibit 1* to the Motion, adding some or all of the factual allegations  
16 and legal theories, additional causes of action, and additional parties identified in  
17 *Exhibit 1* to the Motion.
- 18 4. Once the Trustee's Complaint is filed, the Clerk shall request that the parties file a  
19 Modified Joint Status Report setting forth the status of motions (indicating joinder,  
20 etc.) and addressing other action dates.

21 DATED this 22<sup>nd</sup> day of March, 2006.

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24 FRANKLIN D. BURGESS  
25 UNITED STATES DISTRICT JUDGE  
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